
Appeal Decision

Site visit made on 16 June 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2020

Appeal Ref: APP/F5540/C/19/3242273

1 Crestwood Way, Hounslow TW4 5EQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mano Dharmaraj against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The enforcement notice was issued on 28 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a rear roof extension.
 - The requirements of the notice are:
 - i. Demolish the rear roof extension
 - ii. Remove all resultant debris associated with the above works from the Land
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be:

- varied by deleting the words "3 months" within section 5 (what you are required to do) and its replacement with "6 months".
- corrected by inserting a 'semi-colon' and the word 'and' ("; and") at the end of the first requirement and inserting a 'full stop' (".") at the end of the second requirement.

2. Subject to this variation and correction, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

3. The requirements in the enforcement notice are poorly worded in so far as it lacks any punctuation at the end of each requirement. However, the appellant appears to have understood the requirements. It is therefore necessary to correct the requirements to include the punctuation. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to achieve this correction.

The appeal on ground (b)

4. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact. This has not been demonstrated. On the contrary, the appellant confirms in their appeal form and in their final comments that the recent addition is a rear dormer, which is appropriately described as a rear roof extension. Since the appellant accepts that the recent development of a rear roof extension has occurred, on the balance of probabilities I consider that the matters as alleged by the notice have occurred as a matter of fact.
5. Accordingly, the appeals on ground (b) must fail.

The appeal on ground (c)

6. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. As with ground (b) the onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
7. As outlined above, the appellant accepts that the dormer roof extension is a recent addition to the property but contends that it constitutes permitted development (PD) by virtue of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, the Council state that permitted development rights have been removed from all properties in this residential area by way of a planning condition on the original 1987 approval¹.
8. In order to benefit from any planning permission granted by Article 3 of the GPDO, the development must not be contrary to any condition on an existing planning permission; Article 3(4). Here, condition 1 attached to the 1987 permission restricts such development, and states:

"Notwithstanding the provisions of the Town and Country Planning (General Development Order) 1977 or any subsequent legislation, no further extension or additions shall be constructed without the prior permission of the Local Authority.

Reason: In order not to prejudice the amenities of the adjoining properties".
9. The wording of the above condition is clear and unambiguous, in so far as it explicitly and implicitly restricts any further extension or additions being carried out unless prior permission has been granted by the local planning authority. No such permission has been approved, and on the contrary, planning permission has recently been refused for the erection of rear roof extension².
10. Whilst the appellant contends that the above condition from 1987 permission does not apply to his property, no supporting evidence to substantiate this claim has been submitted, whereas the Council have provided the original 1987 decision notice for the original development¹, containing the above condition.

¹ Council ref: 01054/H/P28 for the construction of access road off Staines Road and erection of residential accommodation approved on 30 April 1987.

² Council ref: 01598/1/P5 refused on 10 April 2019.

11. As such, the rear roof extension is not permitted by the GPDO. It is development for which express planning permission is required. As there is none in place, a breach of planning control has occurred, and the appellant has not discharged the onus on him to demonstrate otherwise. Although the appellant states he was unaware that PD rights had been withdrawn, and therefore planning permission for the rear roof extension was not required, the evidence above shows this to be the case.
12. Accordingly, the appeal fails on ground (c).

The Appeal on Ground (a) and the Deemed Planning Application

Main Issue

13. The main issue is the effect of the development on the character and appearance of the host building and the area generally.

Character and appearance

14. The appeal property is a two-storey end of terrace dwelling, situated in a residential area. In addition to the rear roof extension, the subject of this appeal, the property has been extended with a front porch, a two storey side extension, single storey side/rear extension and a single storey outbuilding in the rear garden.
15. The property is located in a residential area characterised by similar sized terraced properties with modest rear gardens. The relatively consistent design, materials and style of the properties in the area provides a high degree of uniformity to these small groups of terraces, and rhythm and harmony to the street scene. Furthermore, the layout of this housing development means that the rear elevations of these properties are highly visible from the surrounding streets. A particular characteristic and feature of the appeal terrace and area are the original roofs, which have a clear sense of balance and uniformity. The rear roof extension at the appeal site, removes this sense of balance and uniformity.
16. Whilst the rear roof extension is set in slightly from the ridge line, eaves and side boundary with No 3 Crestwood Way, and would not extend above the roof of the first floor side extension, it occupies most of the original rear roof slope. Despite the use of matching materials, the rear roof extension results in an unduly dominant and incongruous feature which is clearly visible from the surrounding streets. There are no other similar rear roof extensions in the subject terrace, and in this regard, the scale and bulk of the extension introduces an overly dominant and visually discordant feature. Therefore, the unauthorised development result harm to the character and appearance of the host building and the terrace as a whole.
17. I note that the appellant highlights that a loft conversion, without the rear roof extension, was previously carried out and existed for more than 4 years. However, the evidence indicates that this was a relatively sensitive development with the only significant external change comprising a single rooflight to the front and rear elevation. As such, the pre-existing loft conversion, without the rear roof extension, would not have been harmful to the character and appearance of the dwelling nor the terrace as a whole, and therefore does not justify current harm identified above.

18. I appreciate that there are rear roof extensions to properties in the Borough and other London Boroughs. However, I am not aware of the particular circumstances in those cases and in any event, I must consider the appeal scheme on its own merits. The existence of other roof extensions in the wider area does not justify the harm I have identified.
19. Therefore, in relation to the main issue, the development has a harmful impact upon the character and appearance of the host building and area generally. The development is therefore contrary to Policies CC1, CC2 and SC7 of the London Borough of Hounslow Local Plan, 2015. Amongst other things, these state that development proposals should conserve and enhance particular features or qualities that contribute to an areas character; promote and support high quality urban design and architecture to create attractive, distinctive, and liveable place; and that all additions do not harm the character and appearance of the building and its context by ensuring that development has regard to the relevant design guidance.
20. The development also runs contrary to the advice contained within the London Borough of Hounslow Residential Extension Guidelines, 2003, which amongst other things states that any roof extension will have a big impact on the appearance of a house and the surrounding area and it is important to make the size of the extension secondary to the size of the roof face within which it will be set.

Other matter

21. In the appellant's final comments, under ground (a), he states that the existing dormer was in existence for more than four years. This is an argument more appropriately advanced under ground (d) 'that it was too late to take enforcement action'. However, no appeal was made on this basis. In any event this contradicts the appeal form which states that the original loft conversion, comprising rooflights only, existed from 2015 and the rear dormer was a more recent addition. Furthermore, under the ground (b) appeal section of his final comments he also states that the existing loft conversion, excluding rear dormer, was in existence for more than the four years. Due to this contradictory information and in the absence of any further evidence, it has not been demonstrated that the rear roof extension has existed for more than four years. It is therefore not necessary for me to consider this further under a 'hidden' ground (d) appeal.

Conclusion on Ground (a) and the Deemed Planning Application

22. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. I have found conflict with the development plan with regard to character and appearance of the host building and area generally. None of the other matters raised by the appellant, including the changes in living standards, lack of harm in relation to neighbours living conditions, the lack of objections from neighbours or the benefits associated with providing additional living space outweigh this harm identified. The appellant also refers to recent changes in planning policy relating to development above existing floors but has not provided any specific details of this. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

23. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Other Matters

24. The appeal is brought only on grounds (a), (b), and (c) only, but the current public health situation, leads me to consider whether the period for compliance with the notice should be extended.
25. In light of Government policy regarding Covid-19 and restriction of social contact, I consider that this period needs to be prolonged by a further 3 months to obtain quotations, appoint a contractor and carry out the works. In my opinion, the 6 months would strike a more reasonable and proportionate balance in light of the current pandemic.
26. I shall therefore extend the period for compliance with the notice to 6 months and vary the notice accordingly.

Conclusion

27. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R. Satheesan

INSPECTOR